

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 06 2006

MICHAEL BALDONI,

Plaintiff - Appellant,

v.

UNUMPROVIDENT; ILLINOIS TOOL
WORKS, INC.; GAYLORD
INDUSTRIES INC.,

Defendants - Appellees.

No. 04-36046

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

D.C. No. CV-03-01381-AS

O R D E R *

Appeal from the United States District Court
for the District of Oregon
Donald C. Ashmanskas, Magistrate, Presiding
Argued and Submitted May 5, 2006
Portland, Oregon
Submission Deferred May 11, 2006
Resubmitted September 5, 2006

Before: NOONAN, TASHIMA, and W. FLETCHER, Circuit Judges.

The district court judgment in this case is vacated. We remand to the district court for reconsideration in light of this court's recent en banc decision in *Abatie v. Alta Health and Life Ins. Co.*, 2006 WL 2347660 (9th Cir. 2006).

No costs.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.